

Malibu City Council
AMENDED¹ Regular Meeting Agenda

Monday, August 11, 2003

5:30 P.M. – CLOSED SESSION
City Hall – Large Conference Room
23815 Stuart Ranch Road

6:30 P.M. – REGULAR CITY COUNCIL MEETING
City Hall – Council Chambers
23815 Stuart Ranch Road

Five-thirty p.m. Closed Session

This time has been set aside for the City Council to meet in a closed session to discuss matters of pending litigation pursuant to Government Code Sections 54956.9(a), 54956.9(b), 54956.8 and 54957. Based on the advice of the City Attorney discussion in open session concerning these matters would prejudice the position of the City in this litigation. The City Attorney will give an additional oral report regarding the closed session at the beginning of the next regular City Council meeting.

Public Comment on Closed Session Items

Existing litigation per Government Code Section 54956.9 (a):

1. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641

Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission
Case No. SS011388

¹ See revised Staff Recommendation for Item No. 3.B.2.

See revised Staff Recommendation for Item No. 4.A.

See new Councilmember Items - Item No. 7.A.

See new Councilmember Items - Item No. 7.B.

See new Councilmember Items - Item No. 7.C.

- d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
- g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
- 5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
- 6. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
- 7. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
- 8. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
- 9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court)
(Amicus)
- 10. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
- 11. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
- 12. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
- 13. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
- 14. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
- 15. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794
- 16. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

- 17. Number of Cases: 2

Six-thirty p.m. Regular Session

Public Hearings will begin at 6:30 p.m., or as soon thereafter as possible, but in no event later than 7:30 p.m.

Call to Order - Mayor

Roll Call - Recording Secretary

Pledge of Allegiance

Closed Session Report

Approval of Agenda

Report on Posting of Agenda – August 1, 2003; *Amended Agenda posted August 8, 2003*

1. Ceremonial/Presentations

A. Recognition of the Senior Blue Ribbon Committee

2. Written and Oral Communications from the Public

A. Communications from the Public concerning matters which are not on the agenda but for which the City Council has subject matter jurisdiction. City Council may not act on these matters except to refer the matters to staff or schedule the matters for a future agenda.

B. City Council Subcommittee reports/Mayor and Councilmember reports and inquiries.

3. Consent Calendar

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 253

At the Regular City Council meeting on July 28, 2003, Ordinance No. 253 was introduced on first reading. This ordinance amends Malibu Municipal Code Chapter 17.46, Wireless Telecommunications Antennas and Facilities.

Conduct second reading, unless waived, and adopt Ordinance No. 253, an ordinance approving Zoning Text Amendment No. 03-003 regarding changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunication antennas and facilities in the City of Malibu.

Staff contact: City Clerk Pope, 456-2489 ext. 228

2. Second Reading and Adoption of Ordinance No. 254

At the Regular City Council meeting on July 28, 2003, Ordinance No. 254 was introduced on first reading. This ordinance amends Malibu Municipal Code Section 17.04.120 by removing the provision that bars zoning applications from being considered on a property where a code violation exists and removes the reference of "Interim" throughout the zoning ordinance.

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 254, an ordinance approving Zoning Text Amendment No. 03-002 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application–Filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of “Interim” throughout the Zoning Ordinance.

Staff contact: City Clerk Pope, 456-2489 ext. 228

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

Staff contact: City Attorney Hogin, 456-2489 ext. 228

2. Approve Warrants

Staff recommendation: 1) To allow and approve warrant demand numbers 22569 through 22574, 22606 through 22612, and 22723 through 22756 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 291 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$252,139.09; and 2) to allow and approve warrant demand numbers 22575 through 22605 and 22613 through 22722 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 291 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands making a total amount of \$246,061.02, including ADP payroll voucher numbers 4699919 – 4699938 in the amount of \$107,017.26 and ADP payroll voucher numbers 4940483 – 4940504 in the amount of \$104,734.39 totaling \$211,751.65.

Staff contact: Administrative Services Director James, 456-2489 ext. 224

3. Approval of Minutes

Approve City Council meeting minutes for the Regular City Council meeting held on July 14, 2003.

Staff contact: City Clerk Pope, 456-2489 ext. 228

4. Malibu Road Drainage Project – Award of Construction Contract

This item this item recommends that a construction contract be awarded to Kalban, Inc. for the construction of drainage improvements on Malibu Road.

Staff recommendation: 1) Authorize the City Manager to execute a contract with Kalban, Inc. of Sun Valley in the amount of \$45,796.50 for the Malibu Road Drainage Project; and 2) adopt Resolution No. 03-47 authorizing the City Manager to execute Program Supplement No. M005.

Staff contact: Acting City Engineer Sanchez, 456-2489 ext. 237

5. City Manager Employment Contract

Staff recommendation: Approve Amendment No. 1 to City Manager Employment Contract between Katie E. Lichtig and the City of Malibu.

Staff contact: City Attorney Hogin, 456-2489 ext. 228

4. **Ordinances and Public Hearings**

This portion of the agenda is for ordinances and for advertised hearing items where formal public testimony on each item is received prior to City Council action; the public hearings will begin at 6:30 p.m., or as soon thereafter as possible, but in no event later than 7:30 p.m.

- A. ADOPTION OF RESOLUTIONS AND ORDINANCES FOR THE PROPOSED WINDSAIL DEVELOPMENT AGREEMENT – *The proposed project consists of an application to reconstruct the former Windsail Restaurant into a new 9,555 square foot restaurant and day spa facility. In addition to the requested Development Agreement, the application includes requests for an amendment to the General Plan Land Use Map and Zoning Map from Multi-Family Residential (MF) to Visitor Serving Commercial (CV); a Conditional Use Permit for a restaurant and bar facility; a Variance to allow parking in the front yard setback area; a Variance for a reduction in the amount of required landscaping; and a Demolition Permit to tear down the existing 7,500 square foot restaurant building. APPLICANT: Weintraub Financial; OWNER: Weintraub Financial; LOCATION: 22706 Pacific Coast Highway; SITE ACREAGE: 1.11 Acres; ZONING: Existing: Multi-Family Residential; Proposed: Commercial Visitor Serving (CV-1)*

The City Council will consider the adoption of resolutions and ordinances approving a Development Agreement and associated entitlements to allow for the reconstruction of the former Windsail restaurant into a new 9,555 square foot restaurant and day spa facility. The proposed Development Agreement allows for an increase in the projects Floor Area Ratio in exchange for public benefit.

Staff recommendation: Continue this item to the City Council meeting of September 8, 2003.

Staff contact: Interim Planning Manager Knight, 456-2489 ext. 243

B. Charitable Solicitation Ordinance

Based on the Court decision in the case of Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton et al. (2002) 536 U.S. 150, it has come to staff's attention that it is necessary to amend the Malibu Municipal Code section related to charitable solicitations. This Ordinance redefines "solicit" and "solicitations" so this provision is no longer unconstitutional.

Staff Recommendation: After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 258 amending Chapter 5.12 of the Municipal Code.

Staff contact: City Attorney Hogin, 456-2489 ext. 228

5. Old Business

None.

6. New Business

None.

7. Council Items**A. Council Appointments to City Commissions and Committees**

Staff recommendation: Appoint new Commission and Committee members to various City Commissions and Committees.

Staff contact: City Clerk Pope, 456-2489 ext. 228

B. Request of Mayor Kearsley to Discuss Various Topics Related to the November 4, 2003 Special Municipal Election Ballot Measure Regarding the Malibu Bay Company Development Agreement (Mayor Kearsley)

Requested Action: Mayor Kearsley requested the Council consider the following:

- 1) delegating authority to the Mayor to:*
 - a) draft the ballot argument in favor of the measure concerning the Malibu Bay Company Development Agreement after receiving ideas from the Council on messages and themes to be included;*
 - b) sign the ballot argument in favor of the measure on behalf of the City Council; and*
 - c) select four other members of the community to sign the ballot argument in favor of the measure;*
- 2) authorizing the Mayor to:*
 - a) either draft or delegate the responsibility to draft the rebuttal to argument against the measure;*
 - b) sign the rebuttal to argument against the measure on behalf of the City Council or not as the Mayor deems appropriate; and*
 - c) select up to five members of the community to sign the rebuttal to argument against the measure; and*
- 3) directing staff to prepare a letter on behalf of the Mayor to the County Registrar-Recorder/County Clerk requesting "M" as the letter designation for the ballot measure with "L" as the alternative from the County Registrar-Recorder/County Clerk.*

C. Recognition of the Coastal Trail Expedition (Councilmember Jennings)

Requested Action: Recognize the Coastal Trail Expedition that is scheduled to be in Malibu on September 1, 2, and 3, 2003.

Adjournment

Future Meetings

Mon, August 25, 2003

CANCELLED

Mon., September 8, 2003

6:30 p.m.

Regular City Council Meeting

City Hall Council Chambers

Guide to the City Council Proceedings

The Oral Communication portion of the agenda is for members of the public to present items which are not listed on the agenda, but are under the subject matter jurisdiction of the City Council. No action may be taken under this section except to direct staff unless the Council, by a two-thirds vote, determines that the need to take action arose after the posting of the agenda or that the item presents an emergency situation for which action is required prior to the next regularly scheduled meeting of the City Council. Although no action may be taken on these non agenda items, the Council and staff will follow up on those items needing response. Each speaker is limited to (3) three minutes. Time may be surrendered by deferring (1) one minute to another speaker, on the same item, not to exceed a total of (8) eight minutes. The speaker wishing to defer time must be present when the item is heard. In order to be recognized and present an item, each speaker must complete and submit to the Recording Secretary a Request to Speak form prior to the beginning of the item being announced by the Mayor (forms are available at the Chamber doors). Speakers are taken in the order slips are submitted.

Items in Consent Calendar Section A have already been considered by the Council at a previous meeting where the public was invited to comment, after which a decision was made. These items are not subject to public discussion at this meeting because the vote taken at the previous meeting was final. Resolutions concerning decisions made at previous meetings are for the purpose of memorializing the decision to assure the accuracy of the findings, the prior vote, and any conditions imposed.

Items in Consent Calendar Section B have not been discussed previously by the Council. If discussion is desired, an item may be removed from the Consent Calendar and will be considered individually. Councilmembers may indicate a negative or abstaining vote on any individual item by so declaring prior to the vote on the motion to adopt the entire Consent Calendar. Items excluded from Consent Calendar will be taken up by the Council following the action on the consent calendar. The Council first will take up the items for which public speaker requests have been submitted. Public speakers are limited to (3) three minutes each. If a speaker slip is submitted late the speaker's time will be limited to (2) minutes. If more than 10 speaker slips are submitted each speaker's time will be limited to (2) two minutes each.

Items set for Public Hearing commence at 7:30 p.m. or as soon thereafter as practical. At that time the City Council will stop its other proceedings and move directly to Public Hearing items. At the conclusion of Public Hearings the City Council will continue the agenda where it left off. For Public Hearings involving zoning matters the appellant will be given 15 minutes to present their position to the City Council, including rebuttal time. All other testimony shall be limited to (3) three minutes per person and follow the rules as set forth under Oral Communication.

Items in Old Business are items which have appeared on previous agendas but have either been continued or tabled to this meeting with no final action having been taken. Public comment on any item is permitted under the public comment rules. Speakers should address whether they are supportive or opposed to either the recommended action or the motion before the City Council for decision.

Items in New Business are items which are appearing for the first time for formal action. Public comment on any item is permitted under the public comment rules. Speakers should address whether they are supportive or opposed to either the recommended action or the motion before the City Council for decision.

City Council Items are items which individual members of the City Council may bring up in terms of reporting to other members of the City Council, to propose future agenda items or to suggest future staff assignments. Items discussed under City Council Items follow the same rules as set forth under Oral Communications in terms of the actions the City Council may take on any item brought up under this portion of the agenda. Each Councilmember's oral item presentations are limited to four minutes. No new items will be taken-up after 10:30 p.m. without a two-thirds vote of the City Council.

City Council meetings are aired on City of Malibu Government Access Channel 3. Broadcasts on Channel 3 occur at 8:00 a.m. and 8:00 p.m. Monday, Wednesday and Friday, Tuesday and Thursday at 8:00 p.m., and at 2:00 p.m. on both Saturday and Sundays. Copies of the staff reports or other written documentation relating to each item of business described above are on file in the office of the City Clerk, Malibu City Hall, 23815 Stuart Ranch Road, Malibu, California and are available for public inspection during regular office hours which

are 8:00 a.m. to 5:00 p.m., Monday through Thursday and 8:00 a.m. to 4:30 p.m., Friday. Copies of staff reports may be purchased for \$0.10 per page. Pursuant to State law, this agenda was posted at least 72 hours prior to the meeting at the Malibu City Offices, Malibu Community Center at Point Dume and Malibu Community Library. The City Hall phone number is (310) 456-2489. To contact City Hall using a telecommunication device for the deaf (TDD), please call (800) 735-2929 and a California Relay Service operator will assist you. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Building & Safety Director Victor Peterson, (310) 456-2489, ext. 251. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADD Title II]

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 8th day of August 2003.

Lisa Pope, City Clerk